
From: Mitchell Klein <mjklein@polsinelli.com>
Sent: Tuesday, August 7, 2012 6:52 PM
To: Williams, Laurie
Cc: Trombadore, Claire; 'Black, Ken'; Lucas Narducci; Rongone, Marie; Ripperda, Mark; Harrison Karr
Subject: RE: Quivira Mine Site - RWPR Removal Action - Response to Rio Algom correspondence dated 8-3-12

Dear Ms. Williams:

We are in receipt of your e-mail of August 3rd, which is an apparent response to the letter we presented to you on August 3rd, 2012, in which RAML formally offered to voluntarily conduct additional remedial work at the Red Water Pond Road.

The EPA has failed to produce any evidence of any current danger posed by the Road or any evidence that RAML has any liability for the Road. Your e-mail fails to address either of those two critical issues, or the fact that the EPA is demanding work without any lawful basis to do so. While your e-mail repeats your wish that some local residents not be inconvenienced, you failed to respond to our demonstration that inconvenience is neither a factor to be considered for a removal action nor a basis for which to ignore the regulatory framework by which EPA is governed.

This lack of a factual and legal basis is further demonstrated by your failure to provide us with an EPA approved Action Memo for the work you are demanding. Therefore, we cannot advise our client to enter into the AOC you have proposed.

The work you are demanding not only falls outside all of the parameters contained within the existing Action Memo for this Site (dated August 24, 2010), it is inconsistent with that Action Memo. That Action Memo requires that the Road be chip sealed and dust control measures applied to the shoulders. Those actions were completed pursuant to an existing Order, but you are now demanding that the work be removed.

The existing Action Memo also specifically requires that any additional future work be performed pursuant to a long term cleanup plan that would include the Quivira Mine site, following a Site-wide Final Status Survey. No such action has taken place, nor even been proposed at this time.

The existing Action Memo established field screening levels for Ra-226 based on residential use, but never purported to establish any remedial level. You are now demanding a remedial level that has not been established through the EPA's evaluation process.

You have failed to provide any response to the technical, legal and regulatory deficiencies we raised. The only response contained in your e-mail was a claim that it would be easier to place waste from the Road excavation on the Quivira Site rather than the UNC site. In fact, it appears that this response resulted from UNC refusing to allow that waste to be put on its property.

This raises the question as to how you propose to order that RAML place radioactive waste on the Quivira Site. You have not provided us with anything that indicates the landowner of that property (the Navajo) will agree to this. The EPA has no authority to require a non-party landowner to be subject to radioactive waste disposal, and your proposed Order does not include the Navajo.

To conclude, you have not provided RAML with any documentation that the actions you are demanding have been approved by the EPA. The actions you are demanding are inconsistent with the requirements contained within an existing Order, you have not provided any evidence that the Navajo will agree to the actions you are demanding, you have not provided any evidence that you have the legal basis to Order a remediation to a level never established through any process, you have not provided any evidence that RAML has any liability for any contamination of the Road, and you have

not provided any evidence that the current conditions of the Road (which are still governed by an existing Order) present any danger whatsoever.

Your failure to address any of these critical issues makes it impossible for our client to agree to your unlawful and unsupported demands. Our client remains willing to voluntarily conduct the additional remedial work as detailed in our letter of August 3rd, 2012.

From: Laurie Williams [mailto:Williams.Laurie@epamail.epa.gov]

Sent: Friday, August 03, 2012 5:35 PM

To: Mitchell Klein

Cc: Claire Trombadore; 'Black, Ken'; Lucas Narducci; Marie Rongone; Mark Ripperda

Subject: Quivira Mine Site - RWPR Removal Action - Response to Rio Algom correspondence dated 8-3-12

Mitch, Hi! Thanks very much for your letter on behalf of Rio Algom, provided to our EPA team earlier today.

We very much appreciate Rio Algom's offer to perform a significant portion of the requested Red Water Pond Road ("RWPR") removal action ("RA"). As you know, we prefer to work with parties in the context of an administrative order on consent ("AOC") and would like to do so in this case.

There are two major constraints we are facing, however, that, in our view, limit the additional time EPA can spend negotiating an AOC, both of which are related to adverse outcomes that would result from a delay in the planned October 1, 2012 start of field work, specifically (a) the potential for a longer period of displacement for RWPR community members in temporary housing, and (b) the potential for unfavorable weather to lengthen the time needed to complete the RWPR RA. As we have discussed, community members who are significantly affected by the disruption associated with the Eastern Drainage Removal Action will be moving from their homes to temporary housing in early September. As a result, it is critical that the RWPR RA begin promptly, and be coordinated with the Eastern Drainage work, in order to ensure that community members are out of their homes for the shortest possible time. This is the reason we have specified an October 1, 2012 start date for the RWPR RA field work, which is only 8 weeks from this coming Monday, August 6th. We also need to consider that Rio Algom will need to create complying work plans for the required actions. Further, once complying work plans are approved, Rio Algom's contractor will need to mobilize to be in the field by October 1. EPA is concerned that an additional period of negotiation regarding an AOC will create a serious risk that the October 1, 2012 start date would slip and that this would result in a longer period of temporary housing for residents and a greater risk that winter weather would interfere with prompt completion of the work.

Further, we would like to address your suggestion that the RWPR waste be stored at the NECR Mine Site. It would not be appropriate to store the RWPR waste at NECR for the following reasons:

(a) **Inability to Reach Agreement on Waste Storage at NECR Mine Site:** While the RWPR waste may include a small amount of commingled waste from the NECR Mine Site, the waste taken by UNC/GE to NECR from Step Out Area No. 1 and that will be taken there from the Eastern Drainage also includes some commingled Quivira waste. EPA understands that UNC/GE and Rio Algom have attempted to negotiate a settlement of the RWPR removal and waste storage issues and have been unsuccessful in doing so, leaving EPA to assign the work in a manner that roughly approximates each party's relative responsibilities.

(b) **Logistical Considerations:** The Quivira pile offers a better logistical location. There is adequate physical space to store the material at the Quivira Mine Site. Further, the access is at the opposite end of RWPR from the UNC gate to the NECR Mine Site. This will allow more of the RWPR action and the Eastern Drainage action to happen simultaneously, without trucking bottlenecks.

Based on these considerations, we are able to offer you the opportunity to enter into the AOC we provided to you on July 13, 2012 with the SOW we provided at that time, by sending a scanned copy of Rio Algom's signed signature page no later than 8 am Pacific Time, Wednesday, August 8th. If this is not acceptable, I anticipate that EPA will proceed with issuance of a UAO on August 8th. As I noted prior, if EPA does issue a UAO, we will still attempt to work with Rio Algom as collaboratively as possible in that context.

Mark Ripperda and I will be available by phone and email throughout the day on Monday, August 6th and Tuesday, August 7th to discuss any issues you may wish to raise.
We appreciate your attention to this matter.

Thank you! Laurie (510) 390-4224 (cell)

Laurie Williams (ORC-3)
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U.S. EPA Region 9
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-----Mitchell Klein <mjklein@polsinelli.com> wrote: -----

To: Laurie Williams/R9/USEPA/US@EPA, Harrison Karr/R9/USEPA/US@EPA
From: Mitchell Klein <mjklein@polsinelli.com>
Date: 08/03/2012 03:04PM
Cc: Claire Trombadore/R9/USEPA/US@EPA, Mark Ripperda/R9/USEPA/US@EPA, Marie Rongone/R9/USEPA/US@EPA, "Black, Ken" <Ken.Black@bhpbilliton.com>, Lucas Narducci <LNarducci@Polsinelli.com>
Subject: FW: 8-3-12 Ltr. to L. Williams.pdf - Adobe Acrobat Professional

[Please see the attached letter, hard copy to follow.](#)

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[attachment "8-3-12 Ltr. to L. Williams.pdf" removed by Laurie Williams/R9/USEPA/US]

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